

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.  
KARLA BOZARTH,

Defendant.

Case Nos.: 16-cr-00262-BTM-5  
19-cv-01763-BTM

**ORDER DENYING BOZARTH'S  
SECTION 2255 MOTION**

Pending before the Court is a remaining claim from Defendant Karla Bozarth's motion under 28 U.S.C. § 2255 to vacate, set aside, or reduce her sentence. On June 4, 2021, the Court denied Bozarth's Section 2255 claims except one—her claim that her attorney was ineffective for failing to call Pawel Wlodarczyk as a witness at trial. For the reasons discussed below, the Court rejects that remaining claim and thus denies in full Bozarth's Section 2255 motion.

**I. BACKGROUND**

On November 22, 2016, a jury found Bozarth guilty of nine counts: eight counts of bringing aliens into the United States for financial gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), and one count of conspiracy to do the same. (ECF Nos. 219 & 227). The charges stemmed from a smuggling operation on an aptly named

1 boat, the *Miss Behavin*, on which eight noncitizens were being smuggled into the  
2 United States. Among others, Bozarth, Wlodarczyk, and Ted Jenzen, the boat  
3 captain, were charged regarding the smuggling operation.

4 On the day Bozarth's trial was scheduled to begin, the government dismissed  
5 with prejudice the charges against Wlodarczyk—because the government did not  
6 have a “good-faith basis” to believe it could convict him on the evidence it had.  
7 (ECF No. 262). Jenzen had pled guilty and testified against Bozarth. (ECF No.  
8 264).

9 Bozarth worked for a yacht brokerage company in Mexico. As Bozarth  
10 admits, “there was extensive evidence that [she] sold boats to the smuggling  
11 conspiracy.” (ECF No. 410 at 2). Jenzen testified that Bozarth introduced him to  
12 the smuggling operation, discussed with him how much he would be paid for  
13 captaining the boat, and showed him a different boat that might be used for a  
14 different smuggling operation. (ECF No. 264 at 35-37, 42-47, 56-64). Bozarth  
15 explained to Jenzen that she had orchestrated similar smuggling operations and  
16 asked him to drive noncitizens to the marina for a smuggling operation. (Id. at 35-  
17 38, 56-64).

18 Before this smuggling operation, Bozarth asked Jenzen to do a “sea trial” (a  
19 test run) of the *Miss Behavin*, and Bozarth involved Jenzen in the boat's purchase.  
20 (Id. at 72-78). On February 2, 2016, Bozarth called Jenzen and told him to meet  
21 her at the *Miss Behavin*. (Id. at 100). When Jenzen arrived at the boat,  
22 Wlodarczyk was there with Bozarth. (Id.). Wlodarczyk was Bozarth's employee  
23 and roommate or tenant. The noncitizens were loaded on the boat, and Jenzen  
24 and Wlodarczyk, but not Bozarth, departed on the boat with the noncitizens. (Id.  
25 at 103-06). Jenzen did not know why Wlodarczyk was on the boat. (Id.).

26 The *Miss Behavin* was later stopped by law enforcement officers, who  
27 boarded the boat and discovered the noncitizens. (Id. at 106-114). Jose Aguilar-  
28 Flores, a noncitizen on the *Miss Behavin*, testified that Bozarth picked him up from

1 a restaurant in Ensenada and drove him to the boat. (ECF No. 263 at 71-76).

2 During closing arguments, the prosecutor argued that Wlodarczyk must have  
3 known about the smuggling operation because otherwise he would not have been  
4 allowed on the boat. (ECF No. 267 at 85). The prosecutor also argued that  
5 Wlodarczyk must have known about the operation through his relationship with  
6 Bozarth, and that Wlodarczyk was the “link” to Bozarth’s guilt. (Id.).

7 As stated, the jury found Bozarth guilty of the nine counts. On July 10, 2017,  
8 the Court sentenced Bozarth to 60 months in custody.<sup>1</sup> (ECF Nos. 279 & 281).  
9 On August 30, 2018, the Ninth Circuit affirmed Bozarth’s convictions. (ECF No.  
10 310).

11 Bozarth filed a Section 2255 motion on September 13, 2019, raising  
12 numerous constitutional claims. (ECF No. 315). The Court rejected all but one  
13 claim—that Bozarth’s attorney was ineffective for failing to call Pawel Wlodarczyk  
14 as a witness at trial. (ECF No. 354). The Court’s found Bozarth’s attorney deficient  
15 for failing to interview Wlodarczyk as a potential witness. (Id.). The Court also  
16 ruled that the prosecutor did not commit misconduct by arguing that Wlodarczyk  
17 was involved in the conspiracy. (Id.).

18 The Court held evidentiary hearings, and Wlodarczyk testified. (ECF Nos.  
19 421, 422, 424. & 425). He claimed he did not know about the smuggling operation  
20 and that he was traveling to the United States to obtain construction goods he  
21 could not obtain in Mexico. The parties briefed the remaining issue regarding  
22 Wlodarczyk, and the Court heard oral argument. (ECF Nos. 394, 407, 410, 423,  
23 426, & 427).

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26 <sup>1</sup> On August 17, 2020, the Court granted a joint motion to release Defendant under 18  
27 U.S.C. § 3582(c)(1)(A)(i), modifying her sentence to time served (33 months and 15  
28 days) and 60 months of supervised release. (ECF Nos. 342 & 346). If Bozarth  
believes the length of her supervised release term is unlawful under 18 U.S.C. §  
3583(b), she should file a motion forthwith.

1       Bozarth asks the Court to reconsider its ruling that the government did not  
 2 commit misconduct by arguing that Wlodarczyk was involved in the conspiracy  
 3 after the charges against him were dismissed with prejudice. The government  
 4 asks the Court to reconsider its finding that trial counsel was deficient for failing to  
 5 interview Wlodarczyk. The Court has reconsidered both rulings and holds that  
 6 there is no basis to disturb them.

7       **II. DISCUSSION**

8       28 U.S.C. § 2255 provides that a prisoner in custody “claiming the right to be  
 9 released upon the ground that the sentence was imposed in violation of the  
 10 Constitution or laws of the United States . . . may move the court which imposed  
 11 the sentence to vacate, set aside or correct the sentence.” “Failure to raise an  
 12 ineffective-assistance-of-counsel claim on direct appeal does not bar the claim  
 13 from being brought in a later, appropriate proceeding under § 2255.” *Massaro v.*  
 14 *United States*, 538 U.S. 500, 509 (2003).

15       A claim for ineffective assistance of counsel must establish that (1) counsel’s  
 16 performance was deficient and (2) the deficient performance prejudiced the  
 17 defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish  
 18 prejudice, Bozarth “must show that there is a reasonable probability that, but for  
 19 counsel’s unprofessional errors, the result of the proceeding would have been  
 20 different. A reasonable probability is a probability sufficient to undermine  
 21 confidence in the outcome.” *Id.* at 694. Prejudice is found where “counsel’s errors  
 22 were so serious as to deprive the defendant of a fair trial, a trial whose result is  
 23 reliable.” *Id.* at 687.

24                   Bozarth has failed to show prejudice.

25       Bozarth has failed to show prejudice, for two reasons.<sup>2</sup> First, Wlodarczyk’s

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 28       <sup>2</sup> The Court reiterates its ruling that counsel was deficient for failing to interview  
 Wlodarczyk. The government has not identified a reasonable reason for counsel to not

1 testimony is incredible and is unlikely to be accepted by a jury. Second, even  
2 assuming otherwise, his testimony hardly undermines the substantial evidence  
3 against Bozarth and thus does not create a “reasonable probability” of a different  
4 result. Each point is addressed in turn.

5 According to Wlodarczyk, he was traveling on a boat to the United States to  
6 obtain construction goods from Home Depot, everyone else on the boat was  
7 orchestrating a smuggling operation or was a noncitizen being smuggled, and yet  
8 he was completely unaware that the boat was being used for smuggling. This is  
9 incredible.

10 Wlodarczyk likely knew that the boat was being used for alien smuggling.  
11 He is likely to have seen the noncitizens or heard the members of the conspiracy  
12 discussing the topic. It is also incredible to believe that a group of smugglers would  
13 allow an innocent bystander to travel with them. Under this theory, the smugglers  
14 would be risking Wlodarczyk discovering the operation and reporting them to the  
15 authorities. That would be a terrible risk for them, and it is very odd to believe they  
16 would have risked that just so Wlodarczyk could buy goods. Furthermore, his  
17 testimony that he was taking a cross-border boat ride to shop at Home Depot lacks  
18 any credibility. No reasonable or rational jury would have accepted Wlodarczyk’s  
19 testimony.

20 Moreover, even if he was unaware of the smuggling operation, a jury may  
21 reasonably believe that he knew the boat was traveling to the United States  
22 because of Bozarth. Bozarth is Wlodarczyk’s apparent connection to the boat, and  
23 it is doubtful that Bozarth knew about the boat’s travel plan without knowing about  
24 the smuggling operation. In other words, the mere fact that Wlodarczyk was on  
25 the boat incriminates Bozarth.

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28 do so.

1       In any case, even assuming the jury accepted Wlodarczyk's testimony, his  
2 testimony does not undermine the Court's confidence in the fairness of the trial nor  
3 raise a reasonable probability of a different result. There were three primary pieces  
4 of evidence against Bozarth: (1) the "extensive evidence that [she] sold boats to  
5 the smuggling conspiracy"; (2) Jenzen's testimony incriminating her and providing  
6 that she was a principal architect of the smuggling operation; and (3) an illegal  
7 alien's testimony that Bozarth drove him to the boat for the smuggling operation.  
8 That evidence is substantial, if not overwhelming. Wlodarczyk's testimony that he  
9 was not involved hardly, if at all, undermines that evidence.

10      Thus, Wlodarczyk's testimony does not come close to undermining the  
11 Court's confidence in the fairness of the trial. There is no reasonable probability  
12 that his testimony would have changed the verdict. His testimony was  
13 unbelievable and, even if accepted, was not particularly probative of Bozarth's guilt  
14 or innocence.<sup>3</sup> Her guilt was proved through substantial evidence, and because  
15 Wlodarczyk's testimony would not have undermined that evidence, the Court must  
16 deny Bozarth's claim and motion. See, e.g., *Hernandez v. Chappell*, 923 F.3d 544,  
17 557 (9th Cir. 2019) (finding no prejudice because the defendant was relying on  
18 weak evidence that would not have sufficiently undermined the overwhelming  
19 evidence of guilt).

20      The Court recognizes that the prosecutor called Wlodarczyk the "link" to  
21 Bozarth's guilt. But that statement oddly underrepresented the strength of the  
22 government's case. The government had a strong case without that alleged link.  
23 So even if Wlodarczyk's testimony would have weakened the prosecutor's  
24 argument, that would have not helped Bozarth. The case against Bozarth would

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27      <sup>3</sup> Indeed, even under Wlodarczyk's testimony, he appears to have lacked personal  
28 knowledge of whether Bozarth was in fact involved in the conspiracy.

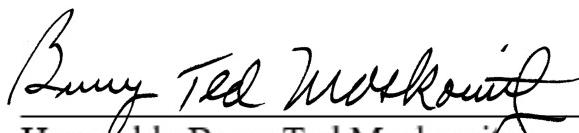
1 have still been very strong. Moreover, as explained, the Court agrees that  
2 Wlodarczyk arguably links Bozarth to the smuggling operation. There are good  
3 reasons to believe Wlodarczyk was not an innocent bystander on the *Miss*  
4 *Behavin*, and his presence on the boat helped to incriminate Bozarth.<sup>4</sup>

5 **III. CONCLUSION AND ORDER**

6 For the reasons stated, Bozarth's Section 2255 motion is denied in full.  
7 Bozarth is denied a certificate of appealability because she has not "made a  
8 substantial showing of the denial of a constitutional right." See 18 U.S.C.  
9 2253(c)(2).

10 **IT IS SO ORDERED.**

11 Dated: June 27, 2024

  
\_\_\_\_\_  
12 Honorable Barry Ted Moskowitz  
13 United States District Judge

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26     <sup>4</sup> Because the prosecutor had good reason to argue that Wlodarczyk was involved in  
27 the conspiracy, the Court reiterates its finding that the prosecutor did not commit  
28 misconduct by so arguing. Bozarth has not shown that the government is precluded  
from dismissing charges against someone and then arguing that he was involved in the  
illegal scheme at issue.